

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1067**

Introduced by  
Senator Gray C

## **AN ACT**

AMENDING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 248, SECTION 1; REPEALING SECTION 13-604, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 287, SECTION 1; AMENDING SECTIONS 13-4062, 31-412, 41-1604.11 AND 41-1604.13, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-604, Arizona Revised Statutes, as amended by  
 3 Laws 2007, chapter 248, section 1, is amended to read:

4 13-604. Dangerous and repetitive offenders; definitions

5 A. Except as provided in subsection F, G or H of this section or  
 6 section 13-604.01, a person who is at least eighteen years of age or who has  
 7 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,  
 8 whether a completed or preparatory offense, and who has a historical prior  
 9 felony conviction shall be sentenced to imprisonment as prescribed in this  
 10 subsection and shall not be eligible for suspension of sentence, probation,  
 11 pardon or release from confinement on any basis except as specifically  
 12 authorized by section 31-233, subsection A or B until the sentence imposed by  
 13 the court has been served, the person is eligible for release pursuant to  
 14 section 41-1604.07 or the sentence is commuted. The presumptive term may be  
 15 mitigated or aggravated within the range prescribed under this subsection  
 16 pursuant to the terms of section 13-702, subsections B, C and D. The terms  
 17 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
18 Class 4	3 years	4.5 years	6 years
19 Class 5	1.5 years	2.25 years	3 years
20 Class 6	1 year	1.75 years	2.25 years

21  
 22 B. Except as provided in subsection I, J or K of this section or  
 23 section 13-604.01, a person who is at least eighteen years of age or who has  
 24 been tried as an adult and who stands convicted of a class 2 or 3 felony,  
 25 whether a completed or preparatory offense, and who has a historical prior  
 26 felony conviction shall be sentenced to imprisonment as prescribed in this  
 27 subsection and shall not be eligible for suspension of sentence, probation,  
 28 pardon or release from confinement on any basis except as specifically  
 29 authorized by section 31-233, subsection A or B until the sentence imposed by  
 30 the court has been served, the person is eligible for release pursuant to  
 31 section 41-1604.07 or the sentence is commuted. The presumptive term may be  
 32 mitigated or aggravated within the range prescribed under this subsection  
 33 pursuant to the terms of section 13-702, subsections B, C and D. The terms  
 34 are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
35 Class 2	6 years	9.25 years	18.5 years
36 Class 3	4.5 years	6.5 years	13 years

37  
 38 C. Except as provided in subsection F, G, H or S of this section or  
 39 section 13-604.01, a person who is at least eighteen years of age or who has  
 40 been tried as an adult and who stands convicted of a class 4, 5 or 6 felony,  
 41 whether a completed or preparatory offense, and who has two or more  
 42 historical prior felony convictions shall be sentenced to imprisonment as  
 43 prescribed in this subsection and shall not be eligible for suspension of  
 44 sentence, probation, pardon or release from confinement on any basis except  
 45 as specifically authorized by section 31-233, subsection A or B until the

1 sentence imposed by the court has been served, the person is eligible for  
 2 release pursuant to section 41-1604.07 or the sentence is commuted. The  
 3 presumptive term may be mitigated or aggravated within the range prescribed  
 4 under this subsection pursuant to the terms of section 13-702, subsections B,  
 5 C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
6 Class 4	8 years	10 years	12 years
7 Class 5	4 years	5 years	6 years
8 Class 6	3 years	3.75 years	4.5 years

10 D. Except as provided in subsection I, J, K or S of this section or  
 11 section 13-604.01, a person who is at least eighteen years of age or who has  
 12 been tried as an adult and who stands convicted of a class 2 or 3 felony, and  
 13 who has two or more historical prior felony convictions, shall be sentenced  
 14 to imprisonment as prescribed in this subsection and shall not be eligible  
 15 for suspension of sentence, probation, pardon or release from confinement on  
 16 any basis except as specifically authorized by section 31-233, subsection A  
 17 or B until the sentence imposed by the court has been served, the person is  
 18 eligible for release pursuant to section 41-1604.07 or the sentence is  
 19 commuted. The presumptive term may be mitigated or aggravated within the  
 20 range prescribed under this subsection pursuant to the terms of section  
 21 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
22 Class 2	14 years	15.75 years	28 years
23 Class 3	10 years	11.25 years	20 years

25 E. A person who is at least eighteen years of age or who has been  
 26 tried as an adult and who stands convicted of any misdemeanor or petty  
 27 offense, other than a traffic offense, and who has been convicted of one or  
 28 more of the same misdemeanors or petty offenses within two years next  
 29 preceding the date of the present offense shall be sentenced for the next  
 30 higher class of offense than that for which such person currently stands  
 31 convicted.

32 F. Except as provided in section 13-604.01, a person who is at least  
 33 eighteen years of age or who has been tried as an adult and who stands  
 34 convicted of a class 4, 5 or 6 felony involving the intentional or knowing  
 35 infliction of serious physical injury or the discharge, use or threatening  
 36 exhibition of a deadly weapon or dangerous instrument without having  
 37 previously been convicted of any felony shall be sentenced to imprisonment as  
 38 prescribed in this subsection and shall not be eligible for suspension of  
 39 sentence, probation, pardon or release from confinement on any basis except  
 40 as specifically authorized by section 31-233, subsection A or B until the  
 41 sentence imposed by the court has been served, the person is eligible for  
 42 release pursuant to section 41-1604.07 or the sentence is commuted. The  
 43 presumptive term may be mitigated or aggravated within the range prescribed  
 44 under this subsection pursuant to the terms of section 13-702, subsections B,  
 45 C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	4 years	6 years	8 years
Class 5	2 years	3 years	4 years
Class 6	1.5 years	2.25 years	3 years

G. Except as provided in section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument a person who has a historical prior felony conviction involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	8 years	10 years	12 years
Class 5	4 years	5 years	6 years
Class 6	3 years	3.75 years	4.5 years

H. Except as provided in subsection S of this section or section 13-604.01, upon conviction of a class 4, 5 or 6 felony involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument a person who has two or more historical prior felony convictions involving the intentional or knowing infliction of serious physical injury or the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to imprisonment as prescribed in this subsection and shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted. The presumptive term may be mitigated or aggravated within the range prescribed under this subsection pursuant to the terms of section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 4	12 years	14 years	16 years
Class 5	6 years	7 years	8 years
Class 6	4.5 years	5.25 years	6 years

I. Except as provided in section 13-604.01, upon a first conviction of a class 2 or 3 felony involving discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or upon conviction of a class 2 or 3

1 felony when the intentional or knowing infliction of serious physical injury  
 2 upon another has occurred, the defendant shall be sentenced to imprisonment  
 3 as prescribed in this subsection and shall not be eligible for suspension of  
 4 sentence, probation, pardon or release from confinement on any basis except  
 5 as specifically authorized by section 31-233, subsection A or B until the  
 6 sentence imposed by the court has been served, the person is eligible for  
 7 release pursuant to section 41-1604.07 or the sentence is commuted. The  
 8 presumptive term may be mitigated or aggravated within the range prescribed  
 9 under this subsection pursuant to the terms of section 13-702, subsections B,  
 10 C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	7 years	10.5 years	21 years
Class 3	5 years	7.5 years	15 years

14 J. Except as provided in section 13-604.01, upon conviction of a class  
 15 2 or 3 felony involving the discharge, use or threatening exhibition of a  
 16 deadly weapon or dangerous instrument or the intentional or knowing  
 17 infliction of serious physical injury upon another, a person who has a  
 18 historical prior felony conviction that is a class 1, 2 or 3 felony involving  
 19 the use or exhibition of a deadly weapon or dangerous instrument or the  
 20 intentional or knowing infliction of serious physical injury on another shall  
 21 be sentenced to imprisonment as prescribed in this subsection and shall not  
 22 be eligible for suspension of sentence, probation, pardon or release from  
 23 confinement on any basis except as specifically authorized by section 31-233,  
 24 subsection A or B until the sentence imposed by the court has been served,  
 25 the person is eligible for release pursuant to section 41-1604.07 or the  
 26 sentence is commuted. The presumptive term may be mitigated or aggravated  
 27 within the range prescribed under this subsection pursuant to the terms of  
 28 section 13-702, subsections B, C and D. The terms are as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
Class 2	14 years	15.75 years	28 years
Class 3	10 years	11.25 years	20 years

32 K. Except as provided in subsection S of this section or section  
 33 13-604.01, upon conviction for a class 2 or 3 felony involving the discharge,  
 34 use or threatening exhibition of a deadly weapon or dangerous instrument or  
 35 the intentional or knowing infliction of serious physical injury upon  
 36 another, a person who has two or more historical prior felony convictions  
 37 that are class 1, 2 or 3 felonies involving the use or exhibition of a deadly  
 38 weapon or dangerous instrument or the intentional or knowing infliction of  
 39 serious physical injury on another shall be sentenced to imprisonment as  
 40 prescribed in this subsection and shall not be eligible for suspension of  
 41 sentence, probation, pardon or release from confinement on any basis except  
 42 as specifically authorized by section 31-233, subsection A or B until the  
 43 sentence imposed by the court has been served, the person is eligible for  
 44 release pursuant to section 41-1604.07 or the sentence is commuted. The  
 45 presumptive term may be mitigated or aggravated within the range prescribed

1 under this subsection pursuant to the terms of section 13-702, subsections B,  
 2 C and D. The terms are as follows:

3 <u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
4 Class 2	21 years	28 years	35 years
5 Class 3	15 years	20 years	25 years

6 L. For the purposes of subsections I, J and K of this section in  
 7 determining the applicability of the penalties provided in this section for  
 8 second or subsequent class 2 or 3 felonies, the conviction for any felony  
 9 committed before October 1, 1978 which, if committed after October 1, 1978,  
 10 could be a dangerous felony under this section may be designated by the state  
 11 as a prior felony.

12 M. Convictions for two or more offenses committed on the same occasion  
 13 shall be counted as only one conviction for purposes of this section.

14 N. A person who has been convicted in any court outside the  
 15 jurisdiction of this state of an offense which if committed within this state  
 16 would be punishable as a felony or misdemeanor is subject to the provisions  
 17 of this section. A person who has been convicted as an adult of an offense  
 18 punishable as a felony or a misdemeanor under the provisions of any prior  
 19 code in this state shall be subject to the provisions of this section.

20 O. Time spent incarcerated within the two years next preceding the  
 21 date of the offense for which a person is currently being sentenced under  
 22 subsection E of this section shall not be included in the two years required  
 23 to be free of convictions for purposes of that subsection.

24 P. The penalties prescribed by this section shall be substituted for  
 25 the penalties otherwise authorized by law if the previous conviction or the  
 26 allegation that the defendant committed a felony while released on bond or on  
 27 the defendant's own recognizance or while escaped from preconviction custody  
 28 as provided in subsection R of this section is charged in the indictment or  
 29 information and admitted or found by the court or if the dangerous nature of  
 30 the felony is charged in the indictment or information and admitted or found  
 31 by the trier of fact. The release provisions prescribed by this section  
 32 shall not be substituted for any penalties required by the substantive  
 33 offense or provision of law that specifies a later release or completion of  
 34 the sentence imposed prior to release. The court shall allow the allegation  
 35 of a prior conviction, the dangerous nature of the felony or the allegation  
 36 that the defendant committed a felony while released on bond or on the  
 37 defendant's own recognizance or while escaped from preconviction custody at  
 38 any time prior to the date the case is actually tried unless the allegation  
 39 is filed fewer than twenty days before the case is actually tried and the  
 40 court finds on the record that the defendant was in fact prejudiced by the  
 41 untimely filing and states the reasons for these findings, provided that when  
 42 the allegation of a prior conviction is filed, the state must make available  
 43 to the defendant a copy of any material or information obtained concerning  
 44 the prior conviction. The charge of previous conviction or the allegation  
 45 that the defendant committed a felony while released on bond or on the

1 defendant's own recognizance or while escaped from preconviction custody  
2 shall not be read to the jury. For the purposes of this subsection,  
3 "dangerous nature of the felony" means a felony involving the discharge, use  
4 or threatening exhibition of a deadly weapon or dangerous instrument or the  
5 intentional or knowing infliction of serious physical injury upon another.

6 Q. Intentional failure by the court to impose the mandatory sentences  
7 or probation conditions provided in this title shall be deemed to be  
8 malfeasance.

9 R. A person who is convicted of committing any felony offense, which  
10 felony offense is committed while the person is released on bail or on the  
11 defendant's own recognizance on a separate felony offense or while the person  
12 is escaped from preconviction custody for a separate felony offense, shall be  
13 sentenced to a term of imprisonment two years longer than would otherwise be  
14 imposed for the felony offense committed while released on bond or on the  
15 defendant's own recognizance or while escaped from preconviction custody.  
16 The additional sentence imposed under this subsection is in addition to any  
17 enhanced punishment that may be applicable under any of the other subsections  
18 of this section. The defendant is not eligible for suspension of sentence,  
19 probation, pardon or release from confinement on any basis except as  
20 specifically authorized by section 31-233, subsection A or B until the two  
21 years are served, the person is eligible for release pursuant to section  
22 41-1604.07 or the sentence is commuted.

23 S. A person who is at least eighteen years of age or who has been  
24 tried as an adult and who stands convicted of a serious offense except a drug  
25 offense, first degree murder or any dangerous crime against children, whether  
26 a completed or preparatory offense, and who has previously been convicted of  
27 two or more serious offenses not committed on the same occasion shall be  
28 sentenced to life imprisonment and is not eligible for suspension of  
29 sentence, probation, pardon or release from confinement on any basis except  
30 as specifically authorized by section 31-233, subsection A or B until the  
31 person has served not less than twenty-five years or the sentence is  
32 commuted.

33 T. A person who is convicted of committing any felony offense with the  
34 intent to promote, further or assist any criminal conduct by a criminal  
35 street gang shall not be eligible for suspension of sentence, probation,  
36 pardon or release from confinement on any basis except as authorized by  
37 section 31-233, subsection A or B until the sentence imposed by the court has  
38 been served, the person is eligible for release pursuant to section  
39 41-1604.07 or the sentence is commuted. The presumptive, minimum and maximum  
40 sentence for the offense shall be increased by three years **IF THE OFFENSE IS**  
41 **A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE**  
42 **IS A CLASS 2 OR 3 FELONY.** The additional sentence imposed pursuant to this  
43 subsection is in addition to any enhanced sentence that may be applicable.

44 U. A person who is convicted of intentionally or knowingly committing  
45 aggravated assault on a peace officer while the officer is engaged in the

1 execution of any official duties pursuant to section 13-1204, subsection A,  
2 paragraph 1 or 2 shall be sentenced to imprisonment for not less than the  
3 presumptive sentence authorized under this chapter and is not eligible for  
4 suspension of sentence, commutation or release on any basis until the  
5 sentence imposed is served.

6 V. Except as provided in section 13-604.01 or 13-703, if the victim is  
7 an unborn child in the womb at any stage of its development, the defendant  
8 shall be sentenced pursuant to this section.

9 W. For the purposes of this section:

10 1. "Absconder" means a probationer who has moved from the  
11 probationer's primary place of residence without permission of the probation  
12 officer, who cannot be located within ninety days of the previous contact and  
13 against whom a petition to revoke has been filed in the superior court  
14 alleging that the probationer's whereabouts are unknown. A probationer is no  
15 longer deemed to be an absconder when voluntarily or involuntarily returned  
16 to probation service.

17 2. "ESCAPE" MEANS:

18 (a) A DEPARTURE FROM CUSTODY OR FROM A JUVENILE SECURE CARE FACILITY,  
19 A JUVENILE DETENTION FACILITY OR AN ADULT CORRECTIONAL FACILITY IN WHICH THE  
20 PERSON IS HELD OR DETAINED, WITH KNOWLEDGE THAT THE DEPARTURE IS NOT  
21 PERMITTED, OR THE FAILURE TO RETURN TO CUSTODY OR DETENTION FOLLOWING A  
22 TEMPORARY LEAVE GRANTED FOR A SPECIFIC PURPOSE OR FOR A LIMITED PERIOD.

23 (b) A FAILURE TO REPORT AS ORDERED TO CUSTODY OR DETENTION TO BEGIN  
24 SERVING A TERM OF INCARCERATION.

25 ~~2-~~ 3. "HISTORICAL PRIOR FELONY CONVICTION" MEANS:

26 (a) Any prior felony conviction for which the offense of conviction:

27 (i) Mandated a term of imprisonment except for a violation of chapter  
28 34 of this title involving a drug below the threshold amount; or

29 (ii) Involved the intentional or knowing infliction of serious  
30 physical injury; or

31 (iii) Involved the use or exhibition of a deadly weapon or dangerous  
32 instrument; or

33 (iv) Involved the illegal control of a criminal enterprise; or

34 (v) Involved aggravated driving under the influence of intoxicating  
35 liquor or drugs, driving while under the influence of intoxicating liquor or  
36 drugs with a suspended, canceled, revoked or refused driver license or  
37 driving under the influence of intoxicating liquor or drugs with two or more  
38 driving under the influence of intoxicating liquor or drug convictions within  
39 a period of eighty-four months; or

40 (vi) Involved any dangerous crime against children as defined in  
41 section 13-604.01.

42 (b) Any class 2 or 3 felony, except the offenses listed in subdivision  
43 (a) of this paragraph, that was committed within the ten years immediately  
44 preceding the date of the present offense. Any time spent on absconder  
45 status while on probation, ON ESCAPE STATUS or incarcerated is excluded in



1 calculating if the offense was committed within the preceding ten years. If  
2 a court determines a person was not on absconder status while on probation **OR**  
3 **ESCAPE STATUS**, that time is not excluded.

4 (c) Any class 4, 5 or 6 felony, except the offenses listed in  
5 subdivision (a) of this paragraph, that was committed within the five years  
6 immediately preceding the date of the present offense. Any time spent on  
7 absconder status while on probation, **ON ESCAPE STATUS** or incarcerated is  
8 excluded in calculating if the offense was committed within the preceding  
9 five years. If a court determines a person was not on absconder status while  
10 on probation **OR ESCAPE STATUS**, that time is not excluded.

11 (d) Any felony conviction that is a third or more prior felony  
12 conviction.

13 ~~3-~~ 4. "Preconviction custody" means the confinement of a person in a  
14 jail in this state or another state after the person is arrested for or  
15 charged with a felony offense.

16 ~~4-~~ 5. "Serious offense" means any of the following offenses if  
17 committed in this state or any offense committed outside this state which if  
18 committed in this state would constitute one of the following offenses:

- 19 (a) First degree murder.
- 20 (b) Second degree murder.
- 21 (c) Manslaughter.
- 22 (d) Aggravated assault resulting in serious physical injury or  
23 involving the discharge, use or threatening exhibition of a deadly weapon or  
24 dangerous instrument.
- 25 (e) Sexual assault.
- 26 (f) Any dangerous crime against children.
- 27 (g) Arson of an occupied structure.
- 28 (h) Armed robbery.
- 29 (i) Burglary in the first degree.
- 30 (j) Kidnapping.
- 31 (k) Sexual conduct with a minor under fifteen years of age.
- 32 (l) Child prostitution.

33 ~~5-~~ 6. "Substantive offense" means the felony, misdemeanor or petty  
34 offense that the trier of fact found beyond a reasonable doubt the defendant  
35 committed. Substantive offense does not include allegations that, if proven,  
36 would enhance the sentence of imprisonment or fine to which the defendant  
37 otherwise would be subject.

38 Sec. 2. Repeal

39 Section 13-604, Arizona Revised Statutes, as amended by Laws 2007,  
40 chapter 287, section 1, is repealed.

41 Sec. 3. Section 13-4062, Arizona Revised Statutes, is amended to read:  
42 13-4062. Anti-marital fact privilege; other privileged  
43 communications

44 A person shall not be examined as a witness in the following cases:

1           1. A husband for or against his wife without her consent, nor a wife  
2 for or against her husband without his consent, as to events occurring during  
3 the marriage, nor can either, during the marriage or afterwards, without  
4 consent of the other, be examined as to any communication made by one to the  
5 other during the marriage. These exceptions do not apply in a criminal  
6 action or proceeding for a crime committed by the husband against the wife,  
7 or by the wife against the husband, nor in a criminal action or proceeding  
8 against the husband for abandonment, failure to support or provide for or  
9 failure or neglect to furnish the necessities of life to the wife or the  
10 minor children. Either spouse, at his or her request, but not otherwise, may  
11 be examined as a witness for or against the other in a prosecution for an  
12 offense listed in section 13-604, subsection W, paragraph ~~4~~ 5, for bigamy or  
13 adultery, committed by either spouse, or for sexual assault committed by the  
14 husband.

15           2. An attorney, without consent of the attorney's client, as to any  
16 communication made by the client to the attorney, or the attorney's advice  
17 given in the course of professional employment.

18           3. A clergyman or priest, without consent of the person making the  
19 confession, as to any confession made to the clergyman or priest in his  
20 professional character in the course of discipline enjoined by the church to  
21 which the clergyman or priest belongs.

22           4. A physician or surgeon, without consent of the physician's or  
23 surgeon's patient, as to any information acquired in attending the patient  
24 which was necessary to enable the physician or surgeon to prescribe or act  
25 for the patient.

26           Sec. 4. Section 31-412, Arizona Revised Statutes, is amended to read:  
27           31-412. Criteria for release on parole; release; custody of  
28   parolee; definition

29           A. If a prisoner is certified as eligible for parole pursuant to  
30 section 41-1604.09 the board of executive clemency shall authorize the  
31 release of the applicant on parole if the applicant has reached the  
32 applicant's earliest parole eligibility date pursuant to section 41-1604.09,  
33 subsection D and it appears to the board, in its sole discretion, that there  
34 is a substantial probability that the applicant will remain at liberty  
35 without violating the law and that the release is in the best interests of  
36 the state. The applicant shall thereupon be allowed to go on parole in the  
37 legal custody and under the control of the state department of corrections,  
38 until the board revokes the parole or grants an absolute discharge from  
39 parole or until the prisoner reaches the prisoner's individual earned release  
40 credit date pursuant to section 41-1604.10. When the prisoner reaches the  
41 prisoner's individual earned release credit date the prisoner's parole shall  
42 be terminated and the prisoner shall no longer be under the authority of the  
43 board but shall be subject to revocation under section 41-1604.10.

44           B. Notwithstanding subsection A of this section, the director of the  
45 state department of corrections may certify as eligible for parole any

1 prisoner, regardless of the classification of the prisoner, who has reached  
2 the prisoner's parole eligibility date pursuant to section 41-1604.09,  
3 subsection D, unless an increased term has been imposed pursuant to section  
4 41-1604.09, subsection F, for the sole purpose of parole to the custody of  
5 any other jurisdiction to serve a term of imprisonment imposed by the other  
6 jurisdiction or to stand trial on criminal charges in the other jurisdiction  
7 or for the sole purpose of parole to the custody of the state department of  
8 corrections to serve any consecutive term imposed on the prisoner. On  
9 review of an application for parole pursuant to this subsection the board may  
10 authorize parole if, in its discretion, parole appears to be in the best  
11 interests of the state.

12 C. A prisoner who is otherwise eligible for parole, who is not on home  
13 arrest or work furlough and who is currently serving a sentence for a  
14 conviction of a serious offense or conspiracy to commit or attempt to commit  
15 a serious offense shall not be granted parole or absolute discharge from  
16 imprisonment except by one of the following votes:

17 1. A majority affirmative vote if four or more members consider the  
18 action.

19 2. A unanimous affirmative vote if three members consider the action.

20 3. A unanimous affirmative vote if two members consider the action  
21 pursuant to section 31-401, subsection I and the chairman concurs after  
22 reviewing the information considered by the two members.

23 D. The board, as a condition of parole, shall order a prisoner to make  
24 any court-ordered restitution.

25 E. Payment of restitution by the prisoner in accordance with  
26 subsection D of this section shall be made through the clerk of the superior  
27 court in the county in which the prisoner was sentenced for the offense for  
28 which the prisoner has been imprisoned in the same manner as restitution is  
29 paid as a condition of probation. The clerk of the superior court shall  
30 report to the board monthly whether or not restitution has been paid for that  
31 month by the prisoner.

32 F. The board shall not disclose the address of the victim or the  
33 victim's immediate family to any party without the written consent of the  
34 victim or the victim's family.

35 G. For the purposes of this section, "serious offense" includes any of  
36 the following:

37 1. A serious offense as defined in section 13-604, subsection W,  
38 paragraph ~~4~~ 5, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or  
39 (k).

40 2. A dangerous crime against children as defined in section 13-604.01.  
41 The citation of section 13-604.01 is not a necessary element for a serious  
42 offense designation.

43 3. A conviction under a prior criminal code for any offense that  
44 possesses reasonably equivalent offense elements as the offense elements that

1 are listed under section 13-604, subsection W, paragraph ~~4~~ 5 and section  
2 13-604.01, subsection N, paragraph 1.

3 Sec. 5. Section 41-1604.11, Arizona Revised Statutes, is amended to  
4 read:

5 41-1604.11. Order for removal; purposes; duration; work  
6 furlough; notice; failure to return;  
7 classification; applicability; definition

8 A. The director of the state department of corrections may authorize  
9 the temporary removal under custody from prison or any other institution for  
10 the detention of adults under the jurisdiction of the state department of  
11 corrections of any inmate for the purpose of employing that inmate in any  
12 work directly connected with the administration, management or maintenance of  
13 the prison or institution in which the inmate is confined, for purposes of  
14 cooperating voluntarily in medical research that cannot be performed at the  
15 prison or institution, or for participating in community action activities  
16 directed toward delinquency prevention and community betterment programs.  
17 The removal shall not be for a period longer than one day.

18 B. Under specific rules established by the director for the selection  
19 of inmates, the director may also authorize furlough, temporary removal or  
20 temporary release of any inmate for compassionate leave, for the purpose of  
21 furnishing to the inmate medical treatment not available at the prison or  
22 institution, for purposes preparatory to a return to the community within  
23 ninety days of the inmate's release date or for disaster aid, including local  
24 mutual aid and state emergencies. When an inmate is temporarily removed or  
25 temporarily released for a purpose preparatory to return to the community or  
26 for compassionate leave, the director may require the inmate to reimburse the  
27 state, in whole or part, for expenses incurred by the state in connection  
28 with the temporary removal or release.

29 C. The board of executive clemency, under specific rules established  
30 for the selection of inmates, if it appears to the board, in its sole  
31 discretion, that there is a substantial probability that the inmate will  
32 remain at liberty without violating the law and that the release is in the  
33 best interests of the state, may authorize the release of an inmate on work  
34 furlough if the inmate has served not less than six months of the sentence  
35 imposed by the court, is within twelve months of the inmate's parole  
36 eligibility date and has not been convicted of a sexual offense. The  
37 director shall provide information as the board requests concerning any  
38 inmate eligible for release on work furlough. The inmate shall not be  
39 released on work furlough unless the release is approved by the board.

40 D. An inmate who is otherwise eligible for work furlough pursuant to  
41 subsection C of this section, who is not on home arrest and who is currently  
42 serving a sentence for a conviction of a serious offense or conspiracy to  
43 commit or attempt to commit a serious offense shall not be granted work  
44 furlough except by one of the following votes:

1           1. A majority affirmative vote if four or more members of the board of  
2 executive clemency consider the action.

3           2. A unanimous affirmative vote if three members of the board of  
4 executive clemency consider the action.

5           3. A unanimous affirmative vote if two members of the board of  
6 executive clemency consider the action pursuant to section 31-401, subsection  
7 I and the chairman of the board concurs after reviewing the information  
8 considered by the two members.

9           E. Before holding a hearing on the work furlough under consideration,  
10 the board, on request, shall notify and afford an opportunity to be heard to  
11 the presiding judge of the superior court in the county in which the inmate  
12 requesting a work furlough was sentenced, the prosecuting attorney, the  
13 director of the arresting law enforcement agency and the victim of the  
14 offense for which the inmate is incarcerated. The notice shall state the  
15 name of the inmate requesting the work furlough, the offense for which the  
16 inmate was sentenced, the length of the sentence and the date of admission to  
17 the custody of the state department of corrections. The notice to the victim  
18 shall also inform the victim of the victim's right to be present and submit a  
19 written report to the board expressing the victim's opinion concerning the  
20 inmate's release. No hearing concerning work furlough shall be held until  
21 fifteen days after the date of giving the notice. On mailing the notice, the  
22 board shall file a hard copy of the notice as evidence that notification was  
23 sent.

24           F. The board shall require that every inmate released on work furlough  
25 comply with the terms and conditions of release as the board may impose,  
26 including that the inmate be gainfully employed while on work furlough and  
27 that the inmate make restitution to the victim of the offense for which the  
28 inmate was incarcerated.

29           G. If the board finds that an inmate has failed to comply with the  
30 terms and conditions of release or that the best interests of this state  
31 would be served by revocation of an inmate's work furlough, the board may  
32 issue a warrant for retaking the inmate before the expiration of the inmate's  
33 maximum sentence. After return of the inmate, the board may revoke the  
34 inmate's work furlough after the inmate has been given an opportunity to be  
35 heard.

36           H. If the board denies the release of an inmate on work furlough or  
37 home arrest, it may prescribe that the inmate not be recommended again for  
38 release on work furlough or home arrest for a period of up to one year.

39           I. The director shall transmit a monthly report containing the name,  
40 date of birth, offense for which the inmate was sentenced, length of the  
41 sentence and date of admission to the state department of corrections of each  
42 inmate on work furlough or home arrest to the chairperson of the house of  
43 representatives judiciary committee or its successor committee and the  
44 chairperson of the senate judiciary committee or its successor committee.  
45 The director shall also submit a report containing this information for any

1 inmate released on work furlough or home arrest within a jurisdiction to the  
2 county attorney, sheriff and chief of police for the jurisdiction in which  
3 the inmate is released on work furlough or home arrest.

4 J. Any inmate who knowingly fails to return from furlough, home  
5 arrest, work furlough or temporary removal or temporary release granted under  
6 this section is guilty of a class 5 felony.

7 K. At any given time if the director declares there is a shortage of  
8 beds available for inmates within the state department of corrections, the  
9 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be  
10 suspended for any inmate who has served not less than six months of the  
11 sentence imposed by the court, who has not been previously convicted of a  
12 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving  
13 a sexual offense, the use or exhibition of a deadly weapon or dangerous  
14 instrument or the infliction of serious physical injury pursuant to section  
15 13-604, and the inmate shall be continuously eligible for parole, home arrest  
16 or work furlough.

17 L. Prisoners who have served at least one calendar year and who are  
18 serving a sentence for conviction of a crime committed on or after October 1,  
19 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02  
20 or 36-1002.03, and who are sentenced to the custody of the state department  
21 of corrections, may be temporarily released, according to the rules of the  
22 department, at the discretion of the director, one hundred eighty calendar  
23 days prior to expiration of the term imposed and shall remain under the  
24 control of the state department of corrections until expiration of the  
25 maximum sentence specified. If an offender released under this section or  
26 pursuant to section 31-411, subsection B violates the rules, the offender may  
27 be returned to custody and shall be classified to a parole class as provided  
28 by the rules of the department.

29 M. This section applies only to persons who commit felony offenses  
30 before January 1, 1994.

31 N. For the purposes of this section, "serious offense" means any of  
32 the following:

33 1. A serious offense as defined in section 13-604, subsection W,  
34 paragraph ~~4~~ 5, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or  
35 (k).

36 2. A dangerous crime against children as defined in section 13-604.01.  
37 The citation of section 13-604.01 is not a necessary element for a serious  
38 offense designation.

39 3. A conviction under a prior criminal code for any offense that  
40 possesses reasonably equivalent offense elements as the offense elements that  
41 are listed under section 13-604, subsection W, paragraph ~~4~~ 5 or section  
42 13-604.01, subsection N, paragraph 1.

1           Sec. 6. Section 41-1604.13, Arizona Revised Statutes, is amended to  
2 read:

3           41-1604.13. Home arrest; eligibility; victim notification;  
4   conditions; applicability; definition

5           A. An inmate who has served not less than six months of the sentence  
6 imposed by the court is eligible for the home arrest program if the inmate:

7           1. Meets the following criteria:

8           (a) Was convicted of committing a class 4, 5 or 6 felony not involving  
9 the intentional or knowing infliction of serious physical injury or the use  
10 or exhibition of a deadly weapon or dangerous instrument.

11           (b) Was not convicted of a sexual offense.

12           (c) Has not previously been convicted of any felony.

13           2. Violated parole by the commission of a technical violation that was  
14 not chargeable or indictable as a criminal offense.

15           3. Is eligible for work furlough.

16           4. Is eligible for parole pursuant to section 31-412, subsection A.

17           B. The board of executive clemency shall determine which inmates are  
18 released to the home arrest program based on the criteria in subsection A of  
19 this section and based on a determination that there is a substantial  
20 probability that the inmate will remain at liberty without violating the law  
21 and that the release is in the best interests of the state after considering  
22 the offense for which the inmate is presently incarcerated, the prior record  
23 of the inmate, the conduct of the inmate while incarcerated and any other  
24 information concerning the inmate that is in the possession of the state  
25 department of corrections, including any presentence report. The board  
26 maintains the responsibility of revocation as applicable to all parolees.

27           C. An inmate who is otherwise eligible for home arrest, who is not on  
28 work furlough and who is currently serving a sentence for a conviction of a  
29 serious offense or conspiracy to commit or attempt to commit a serious  
30 offense shall not be granted home arrest except by one of the following  
31 votes:

32           1. A majority affirmative vote if four or more members of the board of  
33 executive clemency consider the action.

34           2. A unanimous affirmative vote if three members of the board of  
35 executive clemency consider the action.

36           3. A unanimous affirmative vote if two members of the board of  
37 executive clemency consider the action pursuant to section 31-401, subsection  
38 I and the chairman of the board concurs after reviewing the information  
39 considered by the two members.

40           D. Home arrest is conditioned on the following:

41           1. Active electronic monitoring surveillance for a minimum term of one  
42 year or until eligible for general parole.

43           2. Participation in gainful employment or other beneficial activities.

44           3. Submission to alcohol and drug tests as mandated.

1           4. Payment of the electronic monitoring fee in an amount determined by  
2 the board of not less than one dollar per day and not more than the total  
3 cost of the electronic monitoring unless, after determining the inability of  
4 the inmate to pay the fee, the board requires payment of a lesser amount.  
5 The fees collected shall be returned to the department's home arrest program  
6 to offset operational costs of the program.

7           5. Remaining at the inmate's place of residence at all times except  
8 for movement out of the residence according to mandated conditions.

9           6. Adherence to any other conditions imposed by the court, board of  
10 executive clemency or supervising corrections officers.

11           7. Compliance with all other conditions of supervision.

12           E. Before holding a hearing on home arrest, the board on request shall  
13 notify and afford an opportunity to be heard to the presiding judge of the  
14 superior court in the county in which the inmate requesting home arrest was  
15 sentenced, the prosecuting attorney and the director of the arresting law  
16 enforcement agency. The board shall notify the victim of the offense for  
17 which the inmate is incarcerated. The notice shall state the name of the  
18 inmate requesting home arrest, the offense for which the inmate was  
19 sentenced, the length of the sentence and the date of admission to the  
20 custody of the state department of corrections. The notice to the victim  
21 shall also inform the victim of the victim's right to be present and to  
22 submit a written report to the board expressing the victim's opinion  
23 concerning the inmate's release. No hearing concerning home arrest may be  
24 held until fifteen days after the date of giving the notice. On mailing the  
25 notice, the board shall file a hard copy of the notice as evidence that  
26 notification was sent.

27           F. An inmate who is placed on home arrest is on inmate status, is  
28 subject to all the limitations of rights and movement and is entitled only to  
29 due process rights of return.

30           G. If an inmate violates a condition of home arrest that poses any  
31 threat or danger to the community, or commits an additional felony offense,  
32 the board shall revoke the home arrest and return the inmate to the custody  
33 of the state department of corrections to complete the term of imprisonment  
34 as authorized by law.

35           H. The ratio of supervising corrections officers to supervisees in the  
36 home arrest program shall be no greater than one officer for every  
37 twenty-five supervisees.

38           I. The board shall determine when the supervisee is eligible for  
39 transfer to the regular parole program pursuant to section 31-411.

40           J. This section applies only to persons who commit felony offenses  
41 before January 1, 1994.

42           K. For the purposes of this section, "serious offense" includes any of  
43 the following:



- 1           1. A serious offense as defined in section 13-604, subsection W,  
2 paragraph ~~4~~ 5, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or  
3 (k).
- 4           2. A dangerous crime against children as defined in section 13-604.01.  
5 The citation of section 13-604.01 is not a necessary element for a serious  
6 offense designation.
- 7           3. A conviction under a prior criminal code for any offense that  
8 possesses reasonably equivalent offense elements as the offense elements that  
9 are listed under section 13-604, subsection W, paragraph ~~4~~ 5 and section  
10 13-604.01, subsection N, paragraph 1.